IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.MC.No. 3412 of 2006()

CC.1002/1993 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA
CRRP 558/06 DT. DT.23.8.06.

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PETITIONER: ACCUSED

VARIYAMKANDI M.MUHAMMED,
S/O.ALIKUTTY, JALEEL HOUSE,
VAIKKILASSERI AMSOM DESOM,
VADAKARA TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

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1. P.BALAN, S/O.KANNAN,
PUTHIYADATHIL HOUSE, PUTHUPPANAM AMSOM DESOM,
VADAKARA.

2. STATE REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3412 of 2006

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Dated this the 21st day of February, 2007

O R D E R

The petitioner faced indictment in a prosecution under Section 138 of the N.I. Act. He was found guilty, convicted and sentenced by the trial court. The Appellate Court upheld the verdict of guilty and conviction, but modified the sentence. The petitioner was sentenced to undergo imprisonment for 15 days and to pay a fine of Rs.45,000/- and in default to undergo S.I. for a period of 2 ½ months.

2. Aggrieved by the said appellate judgment, the petitioner came before this Court with a revision petition. The revision petition was admitted. Execution of the sentence was suspended pending disposal of the revision petition, subject to conditions. The petitioner could not comply with those conditions. Consequently, it is submitted at the Bar, the petitioner had to undergo the substantive sentence and the default sentence imposed by the appellate court. Accordingly he had undergone imprisonment for a period of three months, it is submitted.

3. Later, the revision petition was disposed of on merits. At that stage, the petitioner had omitted to bring to the notice of the court that he had actually undergone the sentence imposed by the appellate court. Another Bench of this Court in revision further modified the sentence and sentenced the petitioner to undergo imprisonment till rising of Court and to pay an amount of Rs.50,000/- as compensation and in default to undergo S.I. for a further period of three months. The petitioner was directed to appear before the learned Magistrate on 25.10.2006 to undergo the modified sentence.

4. The learned counsel for the petitioner submits that the failure on the part of the petitioner to bring to the notice of the court the fact that he had already undergone sentence of imprisonment for three months was purely inadvertent. He having already undergone the sentence of imprisonment for three months, he may not be compelled to undergo the default sentence of S.I. for three months all over again, submits the learned counsel. This in short is the plea raised in this Crl.M.C.

5. Having considered all the relevant inputs, I am satisfied that such a direction as prayed for deserves to be issued in the interests of justice. Of course, the petitioner must have brought that fact to the notice of this Court

when the revision was disposed of. But that error/omission cannot certainly oblige the petitioner to undergo imprisonment for a further period of three months as already directed. I am satisfied, in these circumstances, that this Crl.M.C. can be allowed and appropriate further directions can be issued in the matter.

6. This Crl.M.C. is hence allowed and the following directions are issued.

(1) The petitioner shall appear before the learned Magistrate at 11 a.m. on 5.3.2007 to undergo the substantive sentence of imprisonment till rising of Court as ordered by this Court in Crl.R.P.558 of 1998 dt.23.8.2006.

(2) If the petitioner has already undergone imprisonment for a period of three months in execution of the appellate judgment rendered by the Sessions Court, the learned Magistrate shall not compel the petitioner to undergo the default sentence of S.I. for three months again.

(3) The warrant of arrest shall not be executed till 5.3.2007.

(R. BASANT)
Judge

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